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Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
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SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON  
ENERGY AND ENVIRONMENTAL PROTECTION;  
WATER, LAND, AND OCEAN RESOURCES; AND  
AGRICULTURE

THURSDAY, FEBRUARY 4, 2010  
10:00 a.m.  
Room 325

HOUSE BILL NO. 2450  
RELATING TO RENEWABLE ENERGY FACILITIES

Bill No. 2450

Support Y N

Date 2/2

Time 956

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Chairs Morita, Ito and Tsuji, and Members of the Committees:

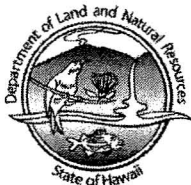
Thank you for the opportunity to testify on House Bill No. 2450. The Department of Agriculture offers comments. The amendment amends Section 201N-14 (renewable energy facility siting process) to extend the exemption from subdivision requirements to:

1. renewable energy facilities approved by the Land Use Commission or county planning commissions under Chapter 205 on Agricultural District lands, and
2. renewable energy facilities approved by the Board of Land and Natural Resources under Chapter 183C.

There already are provisions in the Hawaii Revised Statutes that exempt the subdivision of certain agricultural lands from subdivision requirements, such as Section 205-4.5 (f) pertaining to leasehold agricultural subdivisions, and Section 205-51, pertaining to subdivision of Important Agricultural Lands. Agricultural production is the primary use of these exempted subdivided lands, and few, if any, improvements are allowed on the subdivided lots. We favorably note that this bill references Section 205-4.5 which states that "agricultural uses and activities shall not be restricted on agricultural land."

Hawaii County currently allows leasehold agricultural subdivisions with reduced infrastructure standards, provided no houses or other habitable structures are constructed (Section 23-112, Hawaii County Code). We recall from past legislative sessions that other counties have expressed concern about safety issues such as access of emergency vehicles onto substandard roads within exempt subdivisions.

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the House Committees on  
ENERGY AND ENVIRONMENTAL PROTECTION;  
AGRICULTURE;  
and  
WATER, LAND, & OCEAN RESOURCES**

**Thursday, February 4, 2010  
10:00 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 2450  
RELATING TO RENEWABLE ENERGY FACILITIES**

House Bill 2450 clarifies that the exemption from subdivision requirements for leases and easements for renewable energy facilities applies to renewable energy facilities on agricultural land approved by the Land Use Commission and renewable energy facilities on conservation land permitted by the Board of Land and Natural Resources (Board). The Department of Land and Natural Resources (Department) offers the following comments.

The proposed measure amends Section 201N-14, Hawaii Revised Statutes (HRS), related to the renewable energy facility siting process. The purpose of the amendment, is to extend the exemption from subdivision requirements to:

1. Any renewable energy facility approved by the Land Use Commission or county planning commissions under Chapter 205, HRS, on Agricultural District lands, and
2. Any renewable energy facility approved by the Board under Chapter 183C, HRS.

As the Department noted on a related bill last year (House Bill 589) the manager of approximately 1.3 million acres of public lands, the Department has a fiduciary duty to manage these lands for the benefit of the trust beneficiaries. As such, while the bill exempting renewable energy project lands from subdivision requirements, the Department must also ensure the bill does not adversely impact the remainder of the public lands that will not be used for renewable energy since the State may seek to utilize those remaining lands for other important policy

**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**RUSSELL Y. TSUJI**  
FIRST DEPUTY

**KEN C. KAWAHARA**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Bill No. 2450

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purposes (e.g., offer leases for agricultural use).

In order to use both halves of such land, the portion of the parcel not dedicated to renewable energy purposes must also be considered a lot of legal record. The Department wishes to clarify and confirm that under the bill, the remaining lands (i.e., the portion of the original legal lot of record less the renewable energy lands) will also receive the same legal lot status as the renewable energy parcel and be recognized as a legal lot of record by the counties, thus allowing for those remaining lands to be put to independent use and receive its own mortgage financing and title insurance.

The Department has no other concerns regarding this measures and notes that it will not reduce or retract from our mandate to protect and preserve the cultural and natural resources of the State for the benefit of present and future generations.

Testimony of Richard W Roth  
Chief Executive Officer  
Pacific Light and Power, Anahola, Hawaii

To the Committee on Energy and Environmental Protection; the Committee on  
Agriculture, and the Committee on Water, Land, and Ocean Resources

Thursday, February 4, 2010

10:00a.m.

In the matter of HB 2450 – Relating to Renewable Energy Facilities

Bill No. 2450

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Members of the Committees:

Thank you for this opportunity to offer my testimony.

HB 2450 is important to the State in its attempts to create utility scale renewable energy production facilities. Site acquisition is one of the most difficult hurdles to overcome in the effort to bring these important installations on-line.

Land is a finite commodity and needs to be carefully shepherded and wisely managed. Some decades ago, the State classified its agricultural lands on a 5 tiered system, with *A* being the best and *E* being the worst. It was an admirable and worthy classification at the time.

The State must balance its priorities: with pressures to both develop renewable energy and protect important agricultural lands, the State needs to be open to what is the current best use of its lands for its long term needs.

Renewable energy production facilities, especially solar and bio-mass, will compete with agriculture for lands in sunny, flat areas. In some cases, those lands are classified D or E, and are not affected by this bill. But some of those lands will be A, B, or C.

In the case of Pacific Light and Power's production facility on Kauai, after long searching, the only acreage available to us is classified B. The project only requires 102 acres, but will produce 20% of Kauai's daytime electricity.

Land on an island is inherently "near and dear". We don't have vast tracts of Federal desert acreage. We are always close to developed or developable property. We must use the resources available to us.

Our project was delayed for months, and nearly derailed by the B classification and the possible ramifications of subdividing two 50 acre pieces out of two separate and much larger parcels.

The landowners understandably want to retain their ability to develop their lands at a later date to their perceived highest and best use. Both landowners balked at the need to subdivide. Pacific Light and Power balked as well at the lengthy, costly, and time-consuming process of subdivision.

In the end a compromise was arrived at that leaves the land in a limbo position and may yet affect the viability of the project. The parties are preparing CPRs, with the proviso that the lease may be terminated if in fact this solution is not a solution. In other words, if the project adversely affects the landowner's rights to subsequently develop their remaining properties, they have the right to terminate the lease.

As a developer, I find this only marginally acceptable. I find the opportunity presented by the wisdom of this bill, however, to be curative and intelligent. In our particular project the timing is perhaps a little late, but encouraging nonetheless.

By mitigating the subdivision process requirement on A, B, and C lands, the State would add to the possibility of this important renewable energy project on Kauai going forward to completion.

But more importantly, the State would be sending a message to renewable energy developers and landowners that it is doing what it can to ensure a wise, expeditious and equitable process for the disposition of its dual and sometimes competing responsibilities.